



October 17, 2000

Mr. Ricardo Morado
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Attorneys at Law
855 West Price Road, Suite 9
Brownsville, Texas 78520-8786

OR2000-4042

Dear Mr. Morado:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140691.

The Brownsville Independent School District (the "district"), which you represent, received a written request for all documents supporting the "Level 1 and Level 2 grievances" filed by a named individual. You state that the district has released all responsive documents with certain information redacted. You contend that the redacted information is excepted from public disclosure pursuant to section 552.026 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and common law privacy as incorporated into section 552.101 of the Government Code.

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent.¹ See 20 U.S.C. § 1232g(b)(1). When a student has attained the age of

¹In Open Records Decision No. 634 (1995), this office concluded that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions.

eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to authorize the inspection of these records. 20 U.S.C. § 1232g(d).

"Education records" is defined as those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). For purposes of FERPA, the records at issue constitute "education records" in that they contain information about identifiable students. However, information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (1982), 206 (1978). After reviewing the documents at issue, we agree that most of the redacted information must be withheld from the public pursuant to section 552.026 in conjunction with FERPA.

We note, however, that an educational institution or agency must release "directory information" to the public if the educational institution or agency has designated the information as such in compliance with certain procedures and the appropriate individual authorizes such release. See 20 U.S.C. § 1232g(b)(1), (d). Section 1232g(a)(5)(B) provides as follows:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

FERPA gives the following examples of directory information: "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." *Id.* § 1232g(a)(5)(A). Additionally, this office has determined that a student roster is information that may be categorized as directory information. Open Records Decision No. 244 (1980). We note that some of the documents at issue consist of class rosters, some of which contain other possible directory information such as student addresses, telephone numbers, and names of parents. However, it appears from the district's redactions that some of these rosters were released to the requestor, while others were not. To the extent that the district has designated any of these categories of information as "directory information" in accordance with section 1232g(a)(5)(B) and has received proper authorization for release of the information, we conclude that the district must release that information to the requestor.

As noted above, you also contend that some information contained in one of the records at issue is protected from public disclosure pursuant to common law privacy as incorporated into

section 552.101 of the Government Code. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

The information you seek to withhold pertains to district employees. Although this office has previously determined that information pertaining solely to an employee’s actions as a public servant cannot be deemed to be outside the realm of public interest and thus not excepted from disclosure under common law privacy, *see* Open Records Decision No. 444 (1986), after reviewing the information at issue, we conclude that the information you have redacted is highly intimate or embarrassing and does not pertain to the respective employees’ job performance with the district. Consequently, we agree that there is no legitimate public interest in the redacted information. The district therefore must withhold that information pursuant to common law privacy and section 552.101 of the Government Code.

In summary, the district must withhold pursuant to FERPA and section 552.026 of the Government Code the student identifying information redacted from the records at issue. However, the district must release all directory information the district has designated as such. The information you have redacted from one document must be withheld pursuant to common law privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this

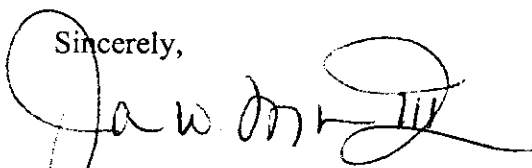
letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', written over a large, stylized circular flourish.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ljp

Ref: ID# 140691

Encl. Submitted documents

cc: Mr. Melrose E. Huff
Education Reporter
The Brownsville Herald
1135 E. Van Buren
Brownsville, Texas 78520
(w/o enclosures)